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#### Contract Database Metadata Elements

Title: **Riverhead, Town of and Riverhead Police Benevolent Association (PBA) (2002)**

Employer Name: **Riverhead, Town of**

Union: **Riverhead Police Benevolent Association (PBA)**

Local:

Effective Date: **01/01/02**

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Agreement, made this 23rd day of December 2002, by and between THE TOWN OF RIVERHEAD, a municipal corporation, having its principal office at 200 Howell Avenue, Riverhead, New York, hereinafter referred to as the "Town", and THE RIVERHEAD POLICE BENEVOLENT ASSOCIATION, INC., a membership corporation, having its principal office at 210 Howell Avenue, Riverhead, New York, hereinafter referred to as either the "PBA" or the "Employee" or "Employees".

1/1/02 - 12/31/04

**ARTICLE I – RECOGNITION**

The Town recognizes the PBA as the sole bargaining agent and representative for all Police Officers and Detectives employed in the Town Police Department.

**ARTICLE II – CHECK OFF**

- A. The Town shall deduct from the wages of the Employee and pay over to the PBA the dues and other obligations due to the PBA by such employees who have authorized the Town to do so by individual authorizations in writing. These deductions shall be taken out in equal installments on the Employee's biweekly paycheck.
- B. Agency Shop Fee Deduction – The Town shall notify the PBA of all unit employees who are on the payroll as of each January 1. Employees who are not presently members of the PBA have the right to join the PBA. If they choose not to join the PBA they shall have deducted from their salary an agency shop fee which shall be an amount equivalent to the amount of dues payable by a member.

**SECTION 1** The agency shop fee shall be deducted from the salary of Employees who do not choose to become members and from the salary of employees whose membership has not yet become effective, provided the PBA furnishes the Town with a list of the names and titles of those Employees and with proof of service of the written notice specified in Section (B) of this Article II.

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**NYS PUBLIC EMPLOYMENT  
RELATIONS BOARD**

**SECTION 2** Every Employee who does not join the PBA at the time of appointment, but whose membership has not yet become effective, shall have an agency shop fee deducted. If the Employee joins the PBA, the agency shop fee deduction shall be discontinued on the same date the dues check-off authorization card takes effect and is received by the Town with written notice from the PBA of the Employee's status.

**SECTION 3** An Employee who terminates PBA membership shall have deducted from his/her salary an agency shop fee. The agency shop fee shall be effective on the same date as the revocation of authorization for dues deduction, and take effect with notice thereof, in writing, received by the Town from the PBA

**SECTION 4** The agency shop fee for each Employee covered by this Agreement shall be deducted from the Employee's regular paycheck and shall be in the amount equal to the periodical dues levied by the PBA for Employees in the affected titles as currently checked off by the Town. The PBA shall certify to the Town the appropriate amount or rate for the agency shop fee deduction.

**SECTION 5** The PBA shall have the exclusive right to the deduction and transmittal of the agency shop fee for unit Employees. The Town shall transmit, no later than the first working date of the second month following the month in which the agency shop fee has been collected, the total of the agency shop fee deductions collected at the same rates as are provided for the check-off of membership dues.

**SECTION 6** Changes in the amount of an agency shop fee deduction shall be effective at the same time as is the practice with changes in membership dues deductions, but not fewer times than the first payroll subsequent to January 1 or July 1, following the date on which notice of such change is furnished. Request for changes in the rate of dues deductions shall be deemed to be a request for a change in the agency shop fee.

**SECTION 7** Employees having the agency shop fee deducted shall be notified, in writing, by the PBA of the change in the amount of the agency shop fee deductions and the date on which such new deduction will begin. A copy of this notice shall be sent to the Town.

**SECTION 8** Agency shop fee deductions will be applied to regular payrolls only.

**SECTION 9** In cases of unearned salaries or wages of Employees covered by this Agreement refunded to appropriation accounts, and in cases of salaries or wages of Employees covered by this Agreement transferred to "UNCLAIMED" accounts, necessary adjustments in agency shop fee accounts will be made by recovery from available unpaid PBA agency shop fee fund balances and returned to the Town.

**SECTION 10** The PBA shall refund to the Employees any agency shop fees wrongfully deducted and transmitted to the PBA

**SECTION 11** No assessments of any kind or nature will be collected through the agency shop fee deduction.

**SECTION 12** No arrears of any kind or nature will be collected through the agency shop fee deduction.

**SECTION 13** The Town shall not be liable in the operation of the agency shop fee deductions for any mistake or error of judgment or any other act of omission or commission and the PBA agrees to hold the Town harmless against any claim whatsoever arising out of the deduction and transmittal of said agency shop fee to the PBA.

**SECTION 14** Agency shop fee deductions will be considered last in arithmetical sequence when residual amount of pay, after other deductions, is less than the full amount of the agency shop fee deduction, and no fractional amount of

agency shop fee deductions will be made nor carried over for deduction in any subsequent payroll period.

**SECTION 15** The PBA affirms that it has established and is maintaining a procedure which provides for the refund, to any employee demanding the same, of any part of any agency shop fee which represents the employee's pro-rata share of expenditures by the PBA in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment. It is expressly agreed that in the event such procedure is discontinued then this Article II, insofar as it relates to agency shop fee deductions, shall be null and void.

**SECTION 16** In the event that any provision of this Article II is found to be invalid, such invalidity shall not impair the validity and enforceability of the remaining provisions of this Article II.

### **ARTICLE III – Hospitalization and Medical Insurance**

**SECTION 1** A. The Town shall pay, on behalf of all Employees, One Hundred Percent (100%) of the cost of either the individual or family (depending on whether the individual is eligible or not) for hospitalization under the Empire Core Plan plus Enhancements. Effective August 17, 1999, health insurance coverage shall commence upon the first day in the month following the completion of 4 full calendar months of service for all employees hired after the complete ratification and approval of this Agreement. Health insurance coverage shall terminate upon the last day in the second full month following the completion of employment, except as set forth below.

In the event Employees are eligible for family coverage, one hundred percent (100%) coverage shall also be provided for his/her family. The plan shall also provide that the Town shall pay for one hundred percent (100%) coverage for individual Employees who hereafter retire from the Department, and the Town

shall pay to the extent of fifty percent (50%) coverage on the premiums for the retiree's family. The Town will provide hospitalization for the families of Employees killed in the line of duty until the spouse remarries and/or the children attain the age of emancipation, whichever comes first. If an unemancipated child is not eligible for health insurance coverage upon or subsequent to the remarriage of the spouse, then the Town's coverage for that child will continue until emancipation or the child becomes eligible for comparable coverage at no additional premium cost.

B. An Employee may elect to change enrollment in the health insurance plan from family coverage to individual or no coverage, or from individual coverage to no coverage. In this event the Employee shall receive 45% of the savings to the Town, provided the Employee remains in such changed status for a period of twelve (12) consecutive months. Payment shall be made annually thereafter during June or December first following the end of the twelve (12) month period, provided that the Employee remains in the changed status. Employees who change enrollment mid-year during the first year that this provision is implemented shall receive payment on a prorata basis. Nothing in this provision shall preclude an Employee from reenrolling in his/her previous coverage within the twelve (12) month period, provided however, that if the Employee does so in fewer than twelve (12) months, no payment shall be made.

C. The Town shall have the option to change health insurance carriers after at least 30 days prior written notice of such intention, provided (a) that a copy of the proposed replacement coverages accompany such notice, and (b) that the coverages shall be, in all respects, comparable to or better than that which currently exists.

**SECTION 2 –DENTAL PLAN** The Town shall pay, on behalf of all Employees, one hundred percent (100%) of the cost of either the individual or family plan for dental coverage under the terms provided by the Riverhead Town Dental Plan. Dental insurance coverage shall commence upon the first day in the month

following the completion of 4 full calendar months of service. Dental insurance coverage shall terminate upon the last day in the second full month following the completion of employment. The Town will provide the Riverhead Town Dental Plan for the families of Employees killed in the line of duty until the spouse remarries and/or the children attain the age of emancipation, whichever comes first. If an unemancipated child is not eligible for dental insurance coverage upon or subsequent to the remarriage of the spouse, then the Town's coverage for that child will continue until emancipation or the child becomes eligible for comparable coverage at no additional premium cost.

**SECTION 3 – OPTICAL PLAN** The Town shall pay, on behalf of all Employees, One Hundred Percent (100%) of the cost of either the individual or family plan for optical coverage under the Riverhead Town Optical Plan. Optical insurance coverage shall commence upon the first day in the month following the completion of 4 full calendar months of service. Optical insurance coverage shall terminate upon the last day in the second full month following the completion of employment. The Town will provide the Riverhead Town Optical Plan for the families of Employees killed in the line of duty until the spouse remarries and/or the children attain the age of emancipation, whichever comes first. If an unemancipated child is not eligible for optical insurance coverage upon or subsequent to the remarriage of the spouse, then the Town's coverage for that child will continue until emancipation or the child becomes eligible for comparable coverage at no additional premium cost.

#### **ARTICLE IV – HOLIDAYS**

The Town recognizes the following paid holidays for all Employees:

**New Year's Day**

**Lincoln's Birthday**

**Easter Sunday**

**Martin Luther King's Birthday**

**Washington's Birthday**

**Memorial Day**

**Independence Day**

**Columbus Day**

**Veteran's Day**

**Christmas Day**

**Labor Day**

**Election Day**

**Thanksgiving Day**

The Employees shall receive no time off for said holidays, but shall be paid an additional day's pay for each of said holidays, according to the daily pay rate of each individual, which compensation shall be paid covering the first six (6) holidays listed in the second pay period, during the period June 15<sup>th</sup> to June 25<sup>th</sup>, and shall be paid covering the last seven (7) holidays listed on December 7<sup>th</sup> or the first business day following December 7<sup>th</sup>. Employees actually working on any of these holidays will be paid an additional one half (1/2) day's pay for each such day. The Town shall deduct State, Federal and FICA tax from holiday pay unless directed in writing by the Employee to do otherwise. The daily rate of pay shall be calculated using a 238 day work year, except the daily rate of pay for an Employee during his/her first eighteen (18) months shall be based on a 260 day work year, and except further that it shall be for the first 24 months for an Employee hired on or after January 1, 1997. Holiday pay shall not be earned by those employees on an unpaid leave of absence, or those employees under suspension for more than 30 consecutive calendar days during the pendency of disciplinary charges.

#### **ARTICLE V – Additional Veterans Holidays**

An Employee who is a veteran and works on either Memorial Day or Veterans' Day shall have compensation which shall include, in addition to all other entitlements, cash overtime at the rate of time and one half for each hour worked. An Employee who is a veteran and does not work on either Memorial Day or Veterans' Day shall have compensation which shall include, in addition to all other entitlements, one (1) day's pay on a cash basis.



## **ARTICLE VI – Recall and Standby**

A. Any Employee who is on call duty and not called in shall be compensated at the rate of two (2) hours for every eight (8) hours so directed. If any Employee is called in while on call duty, the Employee will forego the call duty pay and be compensated under Section (B).

B. Any Employee, including Detectives, recalled after the Employee has finished his/her tour of duty and is immediately directed to engage in regular police work, shall receive a minimum of four (4) hours credited as time worked at the applicable overtime rate and shall receive a minimum of two (2) hours credited as time worked at the applicable overtime rate when required to report to Court or other governmental agency, in direct connection to the Employee's police duties or work. Recalled Employees may be required to work the full amount of the minimum recall for which they are paid.

C. Any fees received by an Employee for appearances before a Court or other governmental agency shall be turned over to the Town.

D. The Town agrees to pay Employees the same mileage allowance in effect for County of Suffolk employees. The Town agrees to provide a police unit, if one is available.

## **ARTICLE VII – Death Leave**

Employees shall be entitled to four (4) consecutive working days leave of absence computed either from the day of death or the day following death at the Employee's option, for death of the Employee's spouse, child (including adopted children), father, mother, brother, sister, parents, parents-in-law, grandparents, grandparents-in-law, grandchildren, daughter-in-law, brother-in-law, sister-in-law, son-in-law, or stepchild.

## **ARTICLE VIII – Overtime and Night Differential**

A. All Employees, other than Detectives, who work in excess of their basic work week or tour of duty [forty (40) hours a week, or eight (8) hours a day] shall be paid overtime compensation at the rate of one and one-half (1 ½) times the employee's regular entitlement.

B. All Employees who work regularly scheduled tours between 4 p.m. and 8 a.m. shall be paid night differential at the annual rate of three thousand six hundred dollars (\$3,600.00). Effective 1-1-03, all Employees who work regularly scheduled tours between 4 p.m. and 8 a.m. shall be paid night differential at the annual rate of three thousand seven hundred dollars (\$3,700.00). Effective 1-1-04, all Employees who work regularly scheduled tours between 4 p.m. and 8 a.m. shall be paid night differential at the annual rate of three thousand eight hundred dollars (\$3,800.00). Payment shall be prorated on a monthly basis, and paid semiannually when receiving holiday pay.

C. All Employees assigned to the K-9 Unit who work regularly scheduled tours between 4 p.m. and 8 a.m. shall be paid at the annual rate of fifty percent (50%) greater than the current night differential. Payment shall be prorated on a monthly basis, and paid semiannually when receiving holiday pay.

D. In calculating overtime under any provision of this agreement, the longevity part of the base shall be frozen at the December 31, 1978, longevity position only for all overtime below the applicable FLSA cap. Overtime will be calculated on base pay using a 238 day (1904 hours) work year, except all Employees for the first eighteen (18) months of service shall have the overtime calculation based on a 260 day (2080 hours) work year, and except further for the first 24 months of service for all Employees hired on or after January 1, 1997. For all overtime at or above the applicable FLSA cap, longevity pay shall be included in the base as required by law.

E. Subject to Town Board meeting dates, the Town shall pay overtime in separate checks on a bimonthly basis. Effective as soon as practicable following the complete

ratification and approval of the 2002-2004 agreement, but not later than the first day of the month following the complete ratification and approval of the 2002-2004 Agreement, overtime is to be included in a timely submitted biweekly time sheet, and will then be paid in the next biweekly paycheck. The Town shall deduct Federal, State and FICA taxes from overtime and night differential pay unless directed in writing by the Employee to do otherwise.

F. Field Training Officer: Each Employee designated by the Chief of Police as a Field Training Officer (FTO) shall be paid one-half (1/2) hour in cash at time and one-half (1/2) for each day actually spent in field training of probationary police officers as compensation for time spent preparing paperwork related to such duties. In order to receive compensation for a particular day, the FTO must submit all relevant paperwork to the Chief or his/her designee within one-half (1/2) hour of the end of the FTO's tour.

## **ARTICLE IX – Vacation**

A. The vacation schedule shall be as follows:

During the first two (2) years of service, an Employee's vacation will be prorated based upon ten (10) working days vacation per year. The rate of accumulation will be six and six-tenths (6.6) hours per month.

Over two (2) years of service, seventeen (17) working days

Over five (5) years of service, nineteen (19) working days

Over ten (10) years of service, twenty-four (24) working days

Over fifteen (15) years of service, twenty-seven (27) working days

Over twenty-one (21) years of service, thirty (30) working days

Vacation may carry into the following year a maximum of up to two (2) years of accruals and in no event may the maximum be exceeded.

B. Employees who have a major illness or injury while on vacation may use their sick leave for the remainder of the illness and have any remaining vacation time retained

provided proper notice is given and a doctor's certificate is presented; or another physician, at the option of the Chief of Police and at the expense of the Town, examines the Employee and, provided further, that the Chief of Police determines that the illness is bona fide. A major illness shall occur when an Employee is incapacitated or hospitalized for a period of five (5) consecutive days or receives a serious physical injury. An Employee shall be credited for any remaining vacation time if the Employee terminates the vacation and continues on sick leave. This paragraph shall be deleted effective February 4, 2003.

C. No vacation time shall be taken by Employees who are in their first year of employment. However, the Town shall provide sick days and personal days in accordance with the provisions of the Agreement.

D. Vacation selection shall be based upon the length of continuous service within the Department, subject to the Chief's sole discretion in determining the operating requirements in the Department.

E. Vacation shall be credited to an Employee for each calendar year on January 1, except in the year of his/her retirement, when vacation will be prorated and credited at the end of each full month worked. In no event shall an Employee be paid for more than sixty (60) vacation days upon retirement.

#### **ARTICLE X –Personal Days**

An Employee shall be granted four (4) days personal leave per annum for conduct of personal business. Employees may accumulate personal days for three (3) years. Personal business shall be defined as those matters relating to a personal, legal, family, religious or household need which can not be performed or attended to by the Employee during times other than the regularly scheduled tour of duty of the Employee. Except in cases of emergency, as determined by the Chief of Police at his/her sole discretion, or if the Department is unable to fill the resulting vacancy through overtime, all personal leave requests that are submitted seven (7) or more days prior to the

requested date shall be granted. If the request for a personal day is submitted fewer than seven (7) days before the requested day, or if another Employee has already been granted the same day off, the request for personal leave shall be granted at the discretion of the Chief of Police or his/her designee.

#### **ARTICLE XI –Longevity Pay**

A. Longevity payments shall be based on the present year's salary and the percentages shall be taken therefrom. Employees shall be paid longevity based on the following schedule:

Four percent (4%) of the total base pay after ten (10) years of service.

Six percent (6%) of the total base pay after fifteen (15) years of service.

Seven percent (7%) of the total base pay after eighteen (18) years of service.

B. For Employees employed as of January 1, 1979, service under this Article XI shall include time served as a member of any police force in New York State on a full-time basis.

#### **ARTICLE XII-Excuse from Duties of the PBA Representatives**

A. During the negotiations by the representatives of the PBA and the Town for renewal or change of a collective bargaining agreement, the negotiators for the PBA shall be excused from their duties in the Department, provided the period of negotiations is reasonable and necessary. The negotiators for the PBA shall not exceed four (4) members, exclusive of counsel and stenographer.

B. The PBA President and Vice President, or delegates to any bona fide police organization which the PBA is an associated member of, upon approval of the Chief of Police, shall have the right to attend meetings and conventions to which the PBA belongs, in pursuance of their obligations as officers or delegates of the PBA, without loss of pay or time, and in accordance with requirements of the Audit and Control

Bureau of the New York State Comptroller's Office. The PBA President, upon approval of the Chief of Police, shall also have the right to attend meetings honoring members of the PBA.

### **ARTICLE XIII- Duty Tours**

A. Employees shall continue to work the duty chart currently in effect and as issued by the Chief of Police.

B. The number of work days shall be 238 per year. All Employees for the first eighteen (18) months of service shall work 260 days per year, and thereafter the number of work days shall be 238 days per year. All Employees hired on or after January 1, 1997 shall work 260 days per year for the first 24 months of service.

### **ARTICLE XIV – Supplemental Death Benefit**

The Town has adopted Section 360-b of the Retirement and Social Security Law providing the supplemental death benefit for Employees who de cease while active members of the Department. The Town will make a Ten Thousand Dollar (\$10,000) contribution for an Employee who is killed in the line of duty to the Employee's spouse or his/her estate.

### **ARTICLE XV – Severance and Death Benefits**

A. Unused compensatory time, overtime, holiday and vacation pay shall be paid over to the Employee, the Employee's spouse, or the Employee's estate within thirty (30) days of the Employee's termination of employment because of retirement, resignation or death, except for dismissal for cause.

B. Accumulated personal time shall be payable at the time of termination of employment due to death or resignation. There shall be no payment at the time of retirement or dismissal with cause.

C. All benefits available pursuant to this Article may be payable in up to three (3) installments over three (3) years at the Employee's option.

D. The Estate of any Employee who dies while still a member of the Department shall be entitled to payment for all unused accumulated sick leave days credited to the Employee at the time of death. Compensation for each such day shall be at the rate of pay earned by the Employee at the time of his/her death.

#### **ARTICLE XVI – One Year Final Average Benefits**

The Town shall participate in the twenty (20) year, one-half (1/2) pay final average annual salary, based on the one (1) year option, non-contributory retirement plans, pursuant to the New York State Retirement and Social Security Law. The Town has also adopted the necessary resolutions to provide the benefits of Section 375-i of the Retirement and Social Security Law. The Town has adopted the New York State Police Retirement System, Section 384-e.

#### **ARTICLE XVII – Non-Conflict Rule**

During the term of this Agreement, neither party shall make any rule or regulation in conflict herewith.

#### **ARTICLE XVIII – Promotion – Detective**

Promotions with regard to detective will be accomplished by a procedure which includes a recommendation by the Chief of Police subject to approval by the Town Board by resolution. Effective August 17, 1999, notwithstanding the preceding sentence, detectives serving in a grade for five (5) consecutive years shall be promoted to the next

grade. Time served in grade by employees assigned as detectives on the date of the implementation of this provision shall be credited toward the five (5) consecutive years threshold. Nothing herein shall modify the Chief's discretion to recommend a promotion at an earlier time.

### **ARTICLE XIX – Plain Clothes Duties**

Any assignment of an Employee to plain clothes duties shall be made by the Chief of Police upon notification of the Town Supervisor. An Employee so assigned shall serve at the pleasure of the Chief of Police. Any reassignment of status shall be solely at the discretion of the Chief of Police with no recourse to the Employee. Notification of change in duty status shall also be made immediately to the Office of Accounting in order to firmly establish the start date for payroll purposes. Upon reassignment out of this classification, immediate notification is be made to the Town Supervisor and the Office of Accounting.

### **ARTICLE XX – Working Conditions**

A. Employees shall not be required to wear their hats while performing duty in radio motor patrol cars.

B. An Employee shall fully complete preliminary training in a Police Academy prior to the commencement of being assigned to a regular tour of duty, so long as there is an available class at the time of the Employee's appointment. In the event there is not such an available class, the Employee shall attend the first available one, but shall be allowed to commence his/her regular assignment prior to such classes.

C. All other benefits currently being enjoyed by the Employee, whether by statute, law, ordinance, resolution or precedent shall continue to be in effect provided the benefit does not duplicate a similar benefit herein provided.



D. An Employee shall be compensated for the replacement cost of a personal item or items lost or damaged beyond repair or for the cost to repair a damaged personal item or items, provided the loss or damage is caused without the Employee's negligence and is incurred while the Employee is on duty or actually conducting police business, and further provided, that the item or items are of a nature the Employee would reasonably be expected to have in their possession in the course of duty. If an item is replaced, depreciation will be deducted from the cost of such replacement.

The personal items covered by the provisions of this Section shall be limited to clothing, equipment and accessories actually being worn at the time loss or damage is incurred, or a personal vehicle when parked at or close proximity to a relieving point, and the damage is caused by criminal mischief or vandalism. A motor vehicle shall not be deemed to be operated in the performance of police business when the vehicle is being driven by an Employee to and from the Employee's home on the Employee's daily work assignment.

The Employee seeking to collect hereunder must prove to the satisfaction of the Chief of Police that the loss was actually incurred. When a claim is submitted hereunder, it must be accompanied by a sworn statement that the claim was incurred in the course of the Employee's duties as a police officer, together with an executed claim voucher indicating thereon the items, damage or loss, and the approximate original cost thereof, together with the current value including depreciation, if any. These provisions shall not be applicable for the annual equipment allowance which each Employee receives.

E. All new radio motor patrol cars shall be equipped with air-conditioning, power windows and power door locks.

F. No Employee shall be compelled to a polygraph test.

G. At the Chief's sole, non-grievable discretion, an Employee upon retirement may retain his/her service weapon.

## **ARTICLE XXI – Re-Negotiation**

Upon the mutual agreement between the PBA and the Town, during the term of this Agreement, it may be re-opened for further negotiations for additional benefits for either the Town or for the Employees.

## **ARTICLE XXII – Clothing, Equipment and K-9 Expenses**

A. The Town will provide all Employees with all uniforms and equipment which shall include, but not be limited to, a handgun.

B. An Employee shall receive an equipment allowance toward the cost of required equipment not furnished by the Department and the cleaning of uniforms in the sum of Seven Hundred Fifty Dollars (\$750.00) to be paid on December 7<sup>th</sup> or the first business day following December 7<sup>th</sup>. Effective January 1, 2003, this sum shall be increased to eight hundred fifty dollars (\$850.00). Effective January 1, 2004, this sum shall be increased to nine hundred fifty dollars (\$950.00). The allowance shall be prorated on a quarterly basis for those who do not work a full year in the position. However, if the Employee works in the position for at least one (1) day in any three (3) month period, he/she is entitled to a one quarter (1/4) share of the allowance.

C. Any Employee assigned to perform duty as a Detective or in plain clothes by order of the Chief of Police for a continuous period of not less than three (3) months shall receive an additional allowance in lieu of clothing, on a basis of seven hundred dollars (\$700.00) per calendar year. Effective January 1, 2003, this allowance shall be increased to eight hundred dollars (\$800.00). Effective January 1, 2004, this allowance shall be increased to nine hundred dollars (\$900.00). This clothing allowance shall be paid by separate check, not inclusive in the member's salary, on December 7<sup>th</sup> or the first business day following December 7<sup>th</sup>.

D. Any Employee assigned to perform duty as a K-9 Officer by order of the Chief of Police shall receive an additional annual allowance of three thousand dollars

(\$3,000,00) to reimburse the Employee for time spent in the care and maintenance of the assigned dog.

### **ARTICLE XXIII – Sick Leave**

A. Employees shall accrue sick leave at a rate of one and one-fourth (1 ¼) days per month to a total of fifteen (15) days per year. Sick leave shall not be accrued by those employees on an unpaid leave of absence, or those employees under suspension for more than 30 consecutive calendar days during the pendency of disciplinary charges. In order to be eligible to receive sick leave on any given day, the employee must, immediately after contacting the Department pursuant to the Department's standard procedure for requesting sick leave, also call the FMLA/Sick Line at 727-3200, X777 and advise that the employee is going to be absent from work that day, as well as whether the employee is requesting FMLA coverage for the absence because of a serious medical condition.

B. Employees shall be permitted to accrue a maximum of 300 days of unused sick leave and shall be entitled to receive payment in full upon retirement of a maximum of two hundred twenty seven (227) days payable at the rate in effect at the time of payment and any accumulated sick days from 228 days to 300 days shall be paid at the rate of the average salary over the past three years based on a 238 day work year (1904 hours). In order to qualify for this payment, an Employee must have accrued at least one hundred fifty (150) sick days at retirement. Prior accumulations shall not exceed 300 days. However, an Employee may make an election for sick time buy-out under subsection (C) hereof. This sentence shall be deleted effective February 4, 2003.

C. An Employee may elect to reduce the sick time accrued under paragraph (B) by filing a written election with the Town Clerk before September 1<sup>st</sup>, in the form provided by the Town, for payment to be made in the last week in January of the following year. Buy-out shall be in lots of 25 sick days and shall be applied toward the 150 day threshold in Paragraph "B". No buy-out shall be permitted unless at the time of election the Employee has accumulated at least 125 sick days. Effective February 4, 2003, the

Employee will be deemed to have satisfied this requirement if, at any time during his/her employment, he/she previously bought out sick time. The rate of pay shall be calculated at the time of payment. An Employee having made this election has agreed that the maximum sick leave payable to him/her during his/her employment or upon his/her retirement shall be 300 days. Any payments made prior to retirement shall be deducted from the gross number of days that may be paid to the Employee at retirement. An Employee who has "bought-out" sick leave during his/her career shall be permitted to reaccumulate sick days to a maximum of 300 days but shall not be permitted to reaccumulate for payment purposes and the additional days representing days already "bought-out" may be taken for sick time purposes only. Effective February 4, 2003, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> sentences shall be revised to read, "An Employee who has bought back days may still be paid for unused accumulated sick leave days as follows upon the Employee's retirement: (a) the total number of days bought back shall, for calculation purposes only, be added back into the employee's unused accrued sick leave at the time of retirement; (b) of the 1<sup>st</sup> 227 total days, to be determined using the FIFO (first in, first out) method, those not previously bought back will be paid at full pay based on a 238 day work year (1904 hours) as set forth in Section XXIII(B); and (c) of any remaining days exceeding 227 up to but not exceeding 300, those not previously bought back will be paid at the rate of the average salary over the past three years based on a 238 day work year (1904 hours) as set forth in Section XXIII(B). The Employee may reaccumulate bought back days for sick leave usage purposes only, provided the Employee does not exceed 300 total sick leave days at any one time."

D. Should an Employee accumulate sufficient days to permit that Employee to "buy-out" a lot or lots of 25 sick days, the Employee will not have to re-accumulate the amount of days necessary to reach the threshold necessary for payment. That is, an Employee who has earned at least one hundred twenty-five (125) days sick leave and who "buys-out" that sick leave will not have to accumulate additional days to again reach one hundred twenty-five (125) days in order to purchase sick time. This paragraph shall be deleted effective February 4, 2003.

E. The Town shall be permitted to require a medical certificate at the Town's expense for sick leave absences of less than three (3) days duration and at the Employee's expense for absences of three (3) days duration or longer.

F. Employees absent on sick leave shall notify the ranking officer in charge of the tour prior to two (2) hours before the scheduled tour of duty. The Chief of Police may grant advanced sick leave not to exceed thirty (30) days to an Employee's account. Notwithstanding the foregoing, the Town, in its sole discretion, may provide additional sick leave over and above the maximum accumulation of 300 working days. Sick leave shall only be considered absence necessitated by actual illness or physical disability.

G. If, at the time of purchasing sick time, an Employee has accumulated one hundred fifty (150) sick days, the Employee shall be considered to have reached the one hundred fifty (150) day threshold necessary to receive payment upon retirement. That is, an Employee who has earned at least one hundred fifty (150) sick leave days will not have to accumulate additional days to again reach the one hundred fifty (150) day threshold necessary to receive payment on retirement.

H. **Sick Leave Bonus Plan** A seventy-five dollar (\$75.00) bonus shall be paid to each Employee for each calendar quarter the Employee has taken one sick day or less.

I. The Employee may be permitted to use up to five (5) earned sick days due to the serious illness of a spouse where the Employee has exhausted all available personal days.

J. Child care leaves shall be governed by the federal FMLA. An employee shall have the right to file a grievance, or to commence non-contractual litigation, alleging a violation of the FMLA, but the commencement of one shall bar the commencement of the other.

#### **ARTICLE XXIV – Annual Physical Examination**

All Employees must submit, if requested by the Town, to an annual physical examination by a doctor designated by the Town. Both the Employee and the Town will receive a written report of this examination. Payment for the examination is the responsibility of the Town.

All Employees who receive a written report that medical treatment is required due to obesity or other medical problems such as alcohol or drug abuse shall be required to submit to treatment under a physician's care. The Employee will be entitled to a second medical opinion as agreed by the PBA and Town Board.

#### **ARTICLE XXV – Outside Employment**

An Employee may be engaged in any other employment off duty that is not in violation of Federal, State or County law with the prior approval of the Chief of Police and with a limit of twenty (20) hours per calendar week. No employee shall engage in any security work whatsoever, either actively or as a consultant or part of management, for any outside entity while employed by the Town.

An Employee may engage in security work for an outside entity with prior notification to the Chief as part of the 20 hour per week limit under the following circumstances: (1) the work and/or entity and/or entity's corporate headquarters is located outside the Town; (2) the nature of the employer's business is compatible with and appropriate to the employee's regular police duties (e.g., not an establishment licensed to serve alcohol); and (3) the employee completes and submits to the Chief an affidavit prepared by the Town certifying the prospective employer's name, address and telephone number, the type and nature of the work involved, and that the employee understands and will abide by the provisions of this paragraph. The Chief shall retain the discretion to decide, on a case by case basis, that a particular officer performing this work outside of the Town

may carry or use a firearm as part of otherwise approved security work. The Chief's decision shall not be arbitrary or capricious.

### **ARTICLE XXVI – Bill of Rights**

The wide ranging powers and duties given to the Department and its Employees involve them in all manner of contacts and relationships with the public. Out of these contacts come many questions concerning the actions of members of the force. These questions often require immediate investigation by superior officers. In an effort to insure that these investigations are conducted in a manner which is conducive to good order and discipline, the following guidelines are promulgated:

1. The interrogation of an Employee shall be at a reasonable hour, preferably when the member of the force is on duty, unless the exigencies of the investigation dictate otherwise. Where practicable, interrogations should be scheduled for the daytime.
2. The interrogations shall take place at a location designated by the investigating officer. Usually, it will be at the Police Headquarters or at the place at which the incident allegedly occurred. The Employee may be represented by counsel at all times if he makes such a request.
3. The Employee shall be informed of the nature of the investigation before any interrogation commences, including the name of the complainant, although the address of any complainant and/or witness need not be disclosed. If it is known that the Employee being interrogated is a witness only, the Employee should be so informed at the initial contact.
4. The questioning shall not be unduly long. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, meals, and telephone calls and rest periods as are reasonably necessary.

5. The Employee shall not be threatened with dismissal or other disciplinary punishment. No promises of reward shall be made as an inducement to answering questions.

6. The complete interrogation of the Employee shall be recorded mechanically or by a stenographer if requested by the Employee being interrogated. When the proceedings are recorded, the Employee shall be entitled to examine, and make a copy (at the Employee's expense) of the transcript of such interrogation, if request therefore were made in writing to the Town.

7. If an Employee is under arrest or is likely to be, that is, if he/she shall be apprised of his/her constitutional rights, which are that the Employee must, prior to the interrogation, be informed that he/she has the right to remain silent, and that anything he/she says can and will be used against him/her in court; that he/she must be informed that he/she has the right to consult with counsel and to have counsel with him/her during interrogation. Effective February 4, 2003, this paragraph shall be deleted.

8. In all other cases, there is no obligation, legal or otherwise, on the Department to provide an opportunity for an Employee to consult with counsel or anyone else when questioned by a superior officer about his/her employment or matters relevant to his/her continuing fitness for police service. Nevertheless, in the interest of maintaining the usually high morale of the force, the Town may (but need not) afford an opportunity for an Employee, if he/she so requests, to consult with counsel before being questioned concerning a serious violation of the Rules and Regulations of the Department, provided the interrogation is not unduly delayed. In no event shall the interrogation be postponed for the purposes of consulting with counsel past 10:00 a.m. on the day following the notification of interrogation. Counsel, if available, may be present during the interrogation of an Employee. Requests to consult with counsel in



connection with minor violations will be denied unless sufficient reasons are advanced to support the request. Unless otherwise expressly provided herein, all counsel fees and other expenses incurred by an Employee shall be paid by the Employee and may not be recovered from the Department or the Town.

## **ARTICLE XXVII – Grievance Procedure**

### **A. General Principals**

1. Time limits set forth herein may be extended or diminished only by mutual, written agreement of all parties concerned.
2. Failure at any level of the grievance procedure to communicate a decision to the aggrieved party or his/her representative within the specific time limit shall permit the lodging of an appeal at the next level of the procedure within the time which would have been allotted had the decision been communicated by the final day.
3. Any Employee (under New York State Law) has the right to file an Article 78 proceeding.
4. If a grievance is sustained, the remedy shall not exceed or cover more than thirty (30) calendar days before the date on which the grievance was filed.

### **B. Grievance Procedure**

A “grievance” shall be defined as any alleged violation of the terms and conditions of the collective bargaining agreement and/or terms and conditions of employment and/or disciplinary procedures and all like matters and any and all disciplinary charges against Employees, excluding disputes concerning line of duty injured status of Employees.

All grievances must be filed as outlined below within thirty (30) calendar days from the date on which the event or condition constituting the grievance occurred, or the date on which the grievant knew or reasonably should have known of the event or condition, whichever is later.

There shall be four (4) procedural steps as follows:

### **First Step**

The first procedural step shall consist of the Employee's presentation of the grievance in writing to his/her immediate supervisor and the PBA. A written decision or determination thereon shall be made by the immediate supervisor within ten (10) calendar days from the time of submission. A copy of the decision shall be mailed to the aggrieved Employee, the PBA and the Chief of Police.

### **Second Step**

1. If the PBA is not satisfied with the decision at Step 1, it may appeal the grievance to the Chief of Police by written notice within fifteen (15) calendar days from the date of the decision at Step 1.
2. Within fifteen (15) calendar days after receipt of the appeal, the Chief of Police shall render a decision. A copy of the decision shall be mailed to the aggrieved Employee and the PBA

### **Third Step**

1. If the PBA is not satisfied with the decision at Step 2, it may submit the grievance in writing to the Town Board within fifteen (15) calendar days of the date of the decision at Step 2.

2. Within fifteen (15) calendar days after receipt of the appeal, or at its next regularly scheduled meeting, whichever is later, the Town Board shall consider the grievance in Executive Session.

3. Within seven (7) calendar days after it has completed its consideration of the grievance, the Town Board shall render a written decision on the grievance. A copy of the decision shall be mailed to the aggrieved Employee, the PBA and the Chief of Police.

#### **Fourth Step**

1. Only the P.B.A or the Town can submit an alleged grievance to binding arbitration.

2. The filing for arbitration must be done by means of a written notice within fifteen (15) full working days from the date that the decision of the Town Board is received by the PBA

3. In the event that the parties are unable to agree upon the designation of an Arbitrator, within fifteen (15) calendar days after the decision to arbitrate is made, an Arbitrator shall be appointed by the American Arbitration Association pursuant to its Voluntary Labor Arbitration Rules.

4. The Arbitrator shall be limited to the terms and conditions set forth in this Agreement, and shall have no power to add to, delete from, or otherwise modify any of its terms.

5. The fees and expenses of the American Arbitration Association and the Arbitrator shall be borne equally by the Town and the PBA

6. The election to proceed under this Agreement's Grievance Procedure to arbitration shall act as a waiver of that party's right to seek a remedy in any other forum.

#### **ARTICLE XXVIII – Special Police Officers**

Recognition of the Town's right to employ Special Police Officers notwithstanding, the Town agrees to refrain from the use of Special Police Officers except in the following situations:

1. Enforcement of the Town Code.
2. Crowd Control – Fairs, Parades, and Town Park Events.
3. Traffic Control.
4. Foot Patrols of Business Area.
5. Disasters – When most of the Police Department is called in (storms, etc.).
6. As second Officer on an escort and second Officer on marine unit.
7. Patrol during special affairs.
8. At any time when regular Police Officers are unavailable.  
Unavailable shall mean that no regular Officer is available to work.

#### **ARTICLE XXIX – No Strike Pledge**

The PBA, on its own behalf, and on behalf of its own individual members, affirms that there shall be no strike, job action taken or other interruption of work during the life of this Agreement or at any other time.

#### **ARTICLE XXX – Legislative Action Requirement**

IT IS AGREED BY AND BETWEEN THE PARTIES HERETO THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT

ITS IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFOR, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN ITS APPROVAL.

#### **ARTICLE XXXI – Binding Effect**

This Agreement shall be binding upon the parties hereto, their successors and assigns, by the operations of law or contract.

#### **ARTICLE XXXII – Term of Agreement**

This Agreement shall be effective for the period of time from January 1, 2002 through December 31, 2004, inclusive.

#### **ARTICLE XXXIII-Partial Invalidity**

If any provision of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, all other provisions of same shall, nevertheless, continue in full force and effect.

#### **ARTICLE XXXIV –Vests**

All employees who have been issued bulletproof vests shall be required to wear them while on duty.

#### **ARTICLE XXXV – Deferred Compensation Plan**

As per Town Board Resolution #193 as approved March 5, 1985, and to the extent permitted by the U.S. Internal Revenue Code and the New York State Income Tax Laws, Employees may elect to participate in the Town of Riverhead Deferred Compensation Plan (“457”).

### **ARTICLE XXXVI – Educational Incentive**

An Employee who earns his/her bachelor's degree while employed by the Town will receive a yearly stipend of two percent (2%) of base pay. An Employee who earns a post-graduate degree while employed by the Town will receive a yearly stipend of one percent (1%) of base pay. No stipend will be granted for degrees earned prior to employment with the Town. All degrees, in order to be recognized, must be in the field of Police Science or Law and must be received from an accredited university or college. Payment of the education stipend will be made along with the December payment of Holiday Pay.

### **ARTICLE XXXVII – Salaries**

The salaries for the following Employees for the period January 1, 2002 through December 31, 2004 shall be as follows:

	<u>1/1/02</u>	<u>1/1/03</u>	<u>3/1/04</u>
1 <sup>ST</sup> YEAR OFFICER	\$41,122	\$42,767	\$44,584
2 <sup>ND</sup> YEAR OFFICER	\$47,194	\$49,082	\$51,168
3 <sup>RD</sup> YEAR OFFICER	\$56,457	\$58,715	\$61,210
4 <sup>TH</sup> YEAR OFFICER	\$65,718	\$68,346	\$71,251
5 <sup>TH</sup> YEAR OFFICER	\$74,981	\$77,980	\$81,294
DETECTIVE GRADE III	\$79,191	\$82,358	\$85,859
DETECTIVE GRADE II	\$79,982	\$83,182	\$86,717
DETECTIVE GRADE I	\$80,782	\$84,013	\$87,584

### **ARTICLE XXXVIII – Drug and Alcohol Testing**

#### **A. General Principals**

1. The use of illegal controlled substances or alcohol by Employees adversely affects the Town's ability to safely deliver services, impairs the efficiency of the workforce, endangers the safety of employees and the public, and undermines public trust. Therefore, the use, sale, distribution, or possession of illegal controlled substances or alcohol by any Employee while on duty is prohibited. In addition, Employees are prohibited from being under the influence of illegal controlled substances or alcohol while on duty. Employees in violation of this policy are subject to disciplinary action, up to and including discharge.

2. Unless otherwise noted all discipline under this policy shall be in accordance with applicable provisions of law.

3. Any Employee who refuses to submit to testing or who refuses to cooperate with the testing procedures may be subject to discipline, including discharge. Attempts to alter or substitute the testing specimen will be deemed a refusal to take the test.

4. The procedures and provisions of Article XXVI (Bill of Rights) are specifically applicable to this policy and procedure.

B. Testing

1. Employees shall be subject to urinalysis testing based upon a reasonable suspicion of illegal controlled substance or alcohol use.

a. The order to submit to testing must be justified by a reasonable suspicion that the Employee is or may be under the influence of illegal controlled substances or alcohol while on duty, or is engaging in the use, sale, distribution, or possession of illegal controlled substances or alcohol while on duty.

b. While the “reasonable suspicion” standard does not lend itself to precise definition or mechanical application, vague, unparticularized, unspecified, rudimentary hunches or intuitive feelings do not meet the standard.

c. Reasonable suspicion is the quantum of knowledge sufficient to induce an ordinarily prudent and cautious person to act under the circumstances. Reasonable suspicion must be directed at a specific person and be based on specific and articulable facts and the logical inferences and deductions that can be drawn from those facts.

d. Reasonable suspicion may be based, among other things, on the following:

- (1) Observable phenomena, such as direct observation of drug or alcohol use or possession and/or physical symptoms of being under the influence of drugs or alcohol; or
- (2) A pattern of unusual or abnormal conduct or erratic behavior (e.g. excessive absenteeism, lateness or early leaves); or
- (3) Arrest or conviction for a drug-related offense, or the identification of an Employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking; or
- (4) Information provided by a reliable and credible source; or
- (5) Newly discovered evidence that the Employee has tampered with a previous drug or alcohol test.

e. It is intended that where a decision is made to test, the Employee will be given direct order to submit to the test, and the PBA shall be notified of the order. The test shall be conducted immediately thereafter. The Employee shall be given a brief verbal statement of the basis for reasonable suspicion.

f. Where reasonable suspicion is based on information provided by a confidential informant, defined as an Employee or agent of a governmental law



enforcement agency or the Employee's department, the identity of the source need not be disclosed, except for the name of the governmental law enforcement agency involved, if any. The Town shall not be required to identify a confidential informant in any proceeding, nor can evidence supplied by a confidential informant be suppressed because of a refusal to identify the name of the source.

C. **NEW EMPLOYEES**

All new Employees shall be subject to suspicionless testing prior to appointment. Employees found in violation of the Town's drug/alcohol policy shall be subject to immediate discharge.

D. **TEST PROCEDURES**

1. Insofar as practical, the sample collection process shall be confidential with due regard for the dignity and privacy of the Employee. There shall be no direct observation of giving of urine specimens, unless there is reason to believe that the specimen may be tampered with, in which event direct observation shall be made by a person of the same gender as the Employee giving the specimen.

2. Specimens shall be collected under the supervision of a monitor designated by the Town. The monitor shall mark and seal the specimen to preserve its chain of custody. Thereafter, the specimen shall be transported to the testing laboratory in a manner which shall ensure its integrity and chain of custody. The laboratory selected to perform testing shall be certified by the National Institute on Drug Abuse (NIDA) of the Department of Health and Human Services.

3. Initial urinalysis testing shall be conducted by means of an enzyme multiplied immunoassay test (EMIT). All specimens identified as positive on the initial test shall be confirmed using a gas chromatography/mass spectrometry test (GC/MS). The laboratory shall report as negative all specimens which are negative on either the

initial test or the confirmatory test. Only specimens which test positive on both the initial test and the confirmatory test shall be reported as positive. Copies of results shall be sent to the Town and the Employee. All tests conducted pursuant to this procedure will be paid for by the Town.

4. In the event the test procedures reveal the presence of illegal controlled substances or their metabolites or alcohol, the Employee may be subject to discipline, including discharge. However, in the first instance of such positive drug or alcohol test, any disciplinary charges may be suspended in the Town's sole discretion if the Employee agrees in writing to complete counseling and treatment on his/her own time for such illegal controlled substance use or alcohol use in a program jointly agreed to by the Town and the PBA. The Employee shall agree, as a condition to the suspension of the disciplinary charges, that if he or she fails to attend or complete the program, he or she shall be deemed to have resigned from employment. The Employee shall also agree, as a condition to the suspension of the disciplinary charges or penalty, that for a period of one (1) year following the completion of treatment, he or she shall be subject to periodic random testing for illegal controlled substances and/or alcohol, and that, if he or she completes counseling and treatment but tests positive for illegal controlled substances for alcohol during such one (1) year period, the Town may reinstitute the suspended charges, in addition to preferring new charges. Upon completion of treatment, as outlined above, and the one (1) year period, the original disciplinary charges or penalty shall be considered resolved. The record of the charges and their resolution (the charges, the answer and the stipulation) shall remain in the Employee's file unless the parties otherwise agree.

5. The parties agree to continue their negotiations over the procedures that will be utilized to implement their agreement to adopt a random drug and alcohol testing policy. In the event that the parties are unable to reach an agreement on those procedures within 30 calendar days following the complete ratification and approval of this Agreement, they will proceed immediately to binding arbitration over the issue before a mutually agreed upon arbitrator or, if they cannot agree upon an arbitrator, one selected pursuant to PERB's interest arbitration rules and procedures.

## **ARTICLE XXXIX - Random Drug and Alcohol Testing**

Effective October 1, 2003, the following random drug and alcohol testing procedure shall be adopted, subject to the ratification of this Agreement by the PBA membership and the Town Board. Any disputes regarding the interpretation of this Agreement, as distinguished from whether the Agreement has been correctly applied to a particular member(s), shall be heard by Arbitrator Marlene Gold.

### **(A) Policy**

It is the policy of the Town to detect and deter the abuse of alcohol, the use and possession of illegal drugs and the abuse of prescription drugs in the work place. The parties recognize that the use and possession of such substances constitutes a serious threat to the health and safety of all employees and members of the public. Accordingly, the purpose of this Article is to formalize a Town policy that prohibits the use, possession, sale, delivery or being under the influence of illegal substances and/or drugs and/or alcohol while on duty.

### **(B) Definitions**

1. The term "Drug" shall include controlled substances as defined in Section 220.00(5) of the Penal Law, State of New York, steroids and marijuana, as defined in Section 220.00(6).

2. The term "Drug Abuse" shall include the use of a controlled substance or marijuana, which has not been legally prescribed and/or dispensed, and the improper or excessive use of a legally prescribed drug as determined by the Medical Review Officer designated by the Town.

3. The term "Alcohol Abuse" shall be a test result of 0.04 or greater.

4. Random Employee Selection Sheet: A computer-generated list of randomly selected Town members identified by employee I.D. numbers.

5. Computer Control Sheet: A computer generated list of all PBA unit members contained within the random drug/alcohol test data base.

### **(C) Procedure**

1. Unit members shall be subject to random drug and alcohol testing. A member may not be required to submit to testing more than one time every two

months. The member(s) picked will report for testing upon notification if on duty, or on their next working shift.

2. Whenever members obtain information or suspect that another member may be abusing drugs or alcohol, they shall immediately notify the Chief.

3. Refusal to submit - The refusal by a member to submit to a drug or alcohol test or the adulteration of such test by the member pursuant to the provisions of this order may result in immediate suspension and subsequent disciplinary action which may include dismissal from the Town.

4. Testing Procedures - The following procedures shall apply to all random drug and alcohol tests unless otherwise superceded by this Agreement.

a. Every reasonable effort will be made to maintain employee confidentiality. In order to insure confidentiality and the integrity of the tests, samples will only be taken at the test location by the authorized medical staff. Sample taking will not be conducted, or otherwise interfered with by the Town or any representative of the member. Samples will never be handled or tampered with by the Town or any representative of the member. Samples will not be released to anyone, except as authorized in this policy or as required by law, without the individual written consent of the member.

b. Each member being tested shall present his or her shield and identification card at the test location to ensure proper identification.

c. Each member being tested may consult with and be accompanied by a PBA representative, who may confer with and advise the member before and after the collection process, but shall not participate in or interfere with the process in any way. The representative shall be given reasonable advance notice of when such testing will occur so that he or she may attend. However, the collection process shall not be delayed because the representative is unavailable.

d. Selection of members to be selected on a random basis shall be performed by a computer program which will randomly select the employee number of those to be tested. The random selection of a member will not result in that member's employee number being removed from such selection process.

e. The selection will be made by a laboratory licensed or certified by SAMHSA, HHS and witnessed by a representative designated by the Chief

as well as a representative designated by the PBA. All designated representatives will affix their signatures to the random employee selection sheet and computer control sheet.

f. The selection process shall not be delayed due to the unavailability of the PBA representative.

g. A member selected will be notified and ordered to report for testing. Members will not be given any advance notice of randomly scheduled tests. The PBA President will be permitted to review the list of members selected for testing and the computer control sheet after all selected members have been tested.

h. Members will not be recalled to duty for random testing on their regularly scheduled days off or if the member is on authorized leave.

i. All random employee selection sheets and corresponding computer control sheets will be maintained in the office of the Chief.

j. A member will be exempt from a drug test if at the time of selection for that particular test he or she is unavailable due to (i) vacation, (ii) injury, (iii) sickness, (iv) military leave, (v) bereavement leave, (vi) personal leave, (vii) jury duty or (viii) the member having notified the Department that he/she has requested admission, but has not yet been admitted to, the Employee Assistance Program.

k. All testing pursuant to this Agreement including, but not limited to, screening or initial testing and confirmatory testing shall be performed in compliance with the collection, testing and other requirements promulgated by the U.S. Department of Transportation, Federal Highway Administration.

l. The laboratory administering the test shall assure that the appropriate chain of custody is established in order to verify the identity of each sample being tested.

## 5. Random Drug Testing Procedures

a. There shall be no direct observation of the giving of the urine sample unless there is reason to believe that the sample may be tampered with, in which event direct observation by an authorized individual of the medical staff is permitted. This individual shall be a person of the same gender as the member providing the sample.

b. Testing shall be performed by a laboratory licensed or certified by SAMHSA, HHS. Two separate containers supplied by the testing lab shall be prepared by each member being tested. Each container shall have a code number and date of collection affixed. The specimen shall be divided into two samples at the time of collection and shall be sealed and initialed in the presence of the member.

c. Prior to testing, each member shall list all medications ingested during the preceding 10 days. The member may also list any supplements, vitamins, herbs, foods or other products ingested during that same period. The list shall be sealed in an envelope and the employee's name and date will be written on the outside. If the test results are negative, the envelope will remain sealed and be destroyed in the presence of the PBA President or designee.

d. Initial drug screening will be by the Enzyme Multiple Immunoassay Testing (EMIT). No sample will be further tested upon a negative screening for controlled substances or marijuana. After a negative screening, the sample will be destroyed.

e. Each and every positive EMIT test will be confirmed using Gas Chromatography Mass Spectrometry test (GCMS). Only if confirmed by GCMS will a test result in a positive report. In order to be defined as a "positive" result, the initial and/or confirmatory test levels must be at or above those set forth in the applicable federal D.O.T. guidelines.

#### 6. Random Alcohol Testing Procedures

a. The equipment to be utilized must, at all relevant times, be an approved Evidentiary Breath Testing device (EBT) listed on the National Highway Safety Administration's "Conforming Products List of Evidential Breath Measurement Devices."

b. Any alcohol testing equipment utilized pursuant to paragraph one (a) above shall, at all times, be accuracy tested, cleaned and in all respects tested and maintained in accordance with the quality assurance plan promulgated by the manufacturer of the equipment. Any alcohol testing equipment utilized shall immediately be accuracy tested following any positive test result.

c. Any alcohol testing under this Agreement will only be administered by technicians with valid training certifications from the manufacturer or a certified Breath Alcohol Technician (BAT) trainer which shall be in accordance with Department of Transportation (DOT) Regulations.

d. No PBA unit member will be ordered to administer, observe or otherwise assist in any way in alcohol testing pursuant to this Agreement.

e. The parties agree that random alcohol testing shall only be performed simultaneously with, and upon the same individuals selected for, random drug testing pursuant to this Agreement.

f. Initial alcohol screening shall be conducted by a breath alcohol technician using an individually-sealed mouthpiece opened and attached to the evidential breath testing device ("EST"). The member will be asked to blow forcefully into the mouthpiece for at least six seconds or until the EBT indicates that an adequate amount of breath has been obtained. If the member states that he/she does not have sufficient air capacity, he/she shall be sent immediately for a medical evaluation for verification of the claim. Absence of verification shall be considered a refusal. If the result of the screening is an alcohol concentration of greater than 0.04, a confirmation test will be performed between 15 and 20 minutes after the completion of the screening test. Prior to the confirmation test, the EBT will be cleaned and a new mouthpiece will be used. If the first test result is negative, no further testing will be performed. If the confirmation test is negative, the entire test will be deemed negative, and a negative test result will be reported. Samples will be destroyed.

## 7. Results of Tests

a. Members who are tested will be notified of the results of all drug/alcohol tests and provided a copy of the corresponding test results, as they become available, at no cost to the member as they become available. If the member has a drug and alcohol test and intends on introducing the results of such test at his/her disciplinary hearing, the Town will be provided with a copy of the results of the test at no cost and at least 30 days prior to the hearing.

b. Any member whose test results in a positive report may, at the time of contact with the MRO, request that the second sample be made available

for retesting at the licensed/certified laboratory from a list of such laboratories supplied by the Town. The Town will be responsible for all costs and expenses in connection with the retesting. If the retesting results in a negative report, the test will be deemed negative and all samples will be destroyed.

#### 8. Confidentiality

The test results and/or other records released are to be used solely by the Town to carry out its obligations under the drug and alcohol testing policy, administering the contractual procedures, taking appropriate disciplinary action, or where the release is authorized or required by law. For the purpose of administering the policy, they may only be assessed by a Town employee if designated for that purpose, the Chief, and the attorney for the Town, and/or their designated medical experts, or others authorized by the attorney for the Town for the purpose of presenting evidence in disciplinary matters. If release of these records to others is authorized or required by law, the Town shall, as soon as practicable but not later than the three business days before the date of actual release, except where otherwise not possible, provide notification to the member or, if not available, to the PBA president (or designee) listing the records (to be) released and to whom the records were (to be) released.

#### 9. Positive Test Results

##### a. Generally

i. All positive test results will be reviewed and verified by a qualified Medical Review Officer (MRO) or Substance Abuse professional (SAP) ("MRO"), whichever is applicable, designated by the Town, but who shall not be a Town employee. The Medical Review Officer shall examine alternate medical explanations for a positive test result. Pursuant to this responsibility, he/she may conduct a medical interview with the member, who may be accompanied to the interview by an attorney and/or PBA representative, review the member's medical history or review any other relevant biomedical factors. If the MRO objects, the attorney may not sit in during the interview. In such a case, the member may stop the interview at any time for the purpose of consulting the attorney provided that no unreasonable delay results in



conducting or continuing the interview. If the member provides appropriate documentation and/or the MRO determines that there is a legitimate medical use of the prohibited drug or alcohol, or an alternate medical explanation exists, then the test results are reported as negative. A negative test result is not reviewable by the Town.

ii. The employee may challenge the basis for, and validity of the testing as part of the applicable due process hearing procedures, if any, rather than through the grievance and arbitration.

b. Positive Alcohol Test

i. Employees, who test positive for the use of alcohol, after being interviewed by the BAT, shall be relieved of duty.

(a). If the BAC test result is less than .08, but .04 or greater, then the non-probationary employee shall be suspended without pay for five (5) working days.

(b). If the employee has a BAC of .08 or greater, or has a second positive alcohol test (including a second BAC test result of .08 or greater), then the employee shall be suspended without pay for 30 calendar days and directly referred to and immediately enrolled in an Employee Assistance Program. The employee shall fully and satisfactorily participate in any drug and/or alcohol abuse treatment plan specified by the EAP and shall not return to work or be restored to the payroll until he/she has fully and satisfactorily completed the course of treatment. The employee may utilize his/her accruals during any period of time suspended without pay and/or while enrolled in the EAP. In addition, the employee shall fully execute a consent form to be provided by the Town as a condition of the Town's willingness not to proceed immediately to a disciplinary hearing against the employee. If the employee ever revokes his/her consent, or refuses to fully execute subsequent consent forms deemed necessary by the Town in order for it to satisfactorily confirm the employee's full and satisfactory compliance with this Agreement, then the Town shall have the right, upon prior written notice to the employee, to immediately proceed to terminate the employee's employment, subject to any applicable due process disciplinary hearing procedures. In this event, the employee hereby waives any and all rights he/she might otherwise have pursuant to any applicable law, rule, regulation or contract provision to

assert the applicable statute(s) of limitation, to which the employee might otherwise be entitled relating to the termination of his/her employment.

(c). If the employee has a third positive alcohol test, or is a probationary employee, the employee shall be dismissed from employment, subject to any applicable due process disciplinary hearing procedures.

ii. The employee will be restored to the payroll for any period of time not covered by a suspension without pay and during which he/she has not been approved by the SAP to return to work, unless the delay is the fault of the employee.

iii. Any test result with a blood alcohol concentration below .04 shall constitute and be reported as a negative test. Said result will not be reflected, in any respect, in any Personnel or other Departmental file.

iv. The penalties set forth in this Agreement pertain only to positive alcohol tests and are separate and distinct from penalties which may be imposed as a result of a positive drug test or other bases for discipline.

v. Any employee who tests positive for alcohol shall be required to submit to and pass a return to work alcohol test before returning to duty. This test shall be administered as soon as practical upon the employee's return to work and shall be performed in conformity with the guidelines established in this Agreement. If the employee tests positive on a return to work alcohol test, the positive result shall constitute an additional offense under this Agreement.

c. Positive Drug Test

i. Members who test positive for the use of drugs, after being interviewed by the MRO, shall be relieved of duty. The Town retains the right to discipline a member who tests positive for drug use up to and including dismissal. In the sole discretion of the Town, members who test positive for the use of drugs who do not have a history of drug abuse may be referred to the EAP.

ii. Discipline For Positive Test Results: Subject to the restrictions of this policy, the Town has the right to discipline members who test positive for drug use.

#### 10. Voluntary treatment

Members may voluntarily seek treatment at any time before he/she reports to the laboratory for testing. Members who voluntarily seek treatment for substance abuse under the auspices of the EAP shall immediately notify the EAP of their desire to participate in the program. The member and the representative of the EAP shall meet as soon as possible for purposes of discussion on entrance into the program. Any member who has voluntarily sought treatment shall not be subject to any disciplinary action for that reason.

### **EMPLOYEE ASSISTANCE PLAN**

#### Policy Statement

A. The Employee Assistance Program is provided within the following framework:

1. All records pertaining to the Employee Assistance Program will be kept confidential. No information obtained from or about a member as a result of his or her participation in the Program shall be made available to be used for any purpose unless a "Consent to Release Information" form has been signed by the member and acknowledged. The member must execute all such forms provided by the Town.

2. The Town assures that the decision to seek or not seek assistance through the Employee Assistance program will in no way be detrimental to a member's job security or advancement opportunities.

3. The Town's sole interest in personal concerns is strictly limited to the effect of the problems on a member's work performance standards.

4. It is the responsibility of the member to meet acceptable work performance standards.

5. It is the responsibility of the member's supervisors to implement this Policy by advising the member of situations in which they have reason to believe that a referral to an EAP may be appropriate to address issues of concern to the Town. This Program will not be used for disciplinary action of any kind against the member.

6. Sick leave or salary continuance will be provided in accordance with the existing collective bargaining agreement between the Town and the PBA.

## **ARTICLE XL – Jury Duty**

The first three (3) days in the year shall be with full pay. All time taken thereafter shall be charged against accrued leave time.

## **ARTICLE XLI- General Municipal Law Section 207-c/Workers' Compensation**

Notwithstanding the provisions of the Worker's Compensation Law, accrued leave time shall be used during the first 5 days of any absence, unless the Town decides not to controvert the employee's claim. If GML 207-c status is awarded to the employee, or if Workers' Compensation awards the Town reimbursement for any or all of these five days, then the day(s) shall be recredited to the employee and the Town shall provide written confirmation to the employee of the recrediting within 30 calendar days of notice to the Town of the award of GML 207-c benefits or Workers' Compensation for the period in issue, unless an appeal is taken from the Workers' Compensation decision.

## **ARTICLE XLII –General Municipal Law Section 207-c Procedure**

### **I. PURPOSE**

This procedure is intended to regulate the application for, and the award and/or termination of, benefits under Section 207-c of the General Municipal Law ("GML 207-c"). It shall operate as a waiver of any other procedural rights the PBA and/or its Members may have pursuant to GML 207-c, including the right to utilize any other forum to seek redress regarding the subject matter set forth herein. Any future changes enacted by the State in the provisions of GML 207-c that conflict with an explicit provision of this procedure shall supersede the preexisting provision.

### **II. APPLICATION FOR BENEFITS**

1. A Member shall continue to be required, as per existing Department rules, procedures, orders, etc. ("rules"), to timely notify the Department of any injury, illness or sickness ("injury") allegedly occurring in or as the result of the performance of the Member's duties and which necessitates medical or other lawful remedial treatment ("GML 207-c disability"). The notification ("application") shall be made on the attached form. Effective February 4, 2003, the Member shall, along with the application for GML 207-c benefits, complete, sign and submit to the Town any medical release forms requested by the Town.

2. An application shall be deemed "untimely" unless it is filed on a timely basis in accordance with the rules and this procedure.

3. Members shall, within two (2) weeks of the occurrence, report to the Chief or designee any sickness or injury to themselves no matter how slight. A Member's failure to comply with these reporting obligations shall result in the denial of an application for benefits under this procedure unless these requirements cannot be met due to (i) the Member's physical or mental incapacity; (ii) an unforeseeable emergency; or (iii) any other situation which the Chief, in his sole discretion, finds acceptable.

### **III. INITIAL APPLICATIONS FOR GML 207-c BENEFITS**

1. The Chief or designee ("the Chief") shall have exclusive authority to initially determine the applicant's eligibility for benefits under GML 207-c. The Chief shall have the authority to conduct a full investigation of the facts concerning the application.

2. After the filing of the application, the Member shall submit to one or more medical examinations as provided by law. The Member and health provider shall cooperate fully with the designated physician. Effective January 1, 2003, this shall include, but not be limited to, promptly forwarding to the Town Attorney's Office and Accounting Office and designated physician all reports, data, records and other

information related to the Member's injury. Failure to cooperate may result in information being excluded as specified in Paragraph 4 of this Section.

3. Any reports submitted by the employee's or Department's health provider shall include the following information: (a) the exact date(s) that the health provider examined the Member regarding the injury; (b) an explanation of what the examination consisted of; (c) diagnosis; (d) causation, and the basis for that belief; (e) treatment modalities; (f) what duties, if any, the Member cannot perform, and for how long; and (g) whether any or all of the duties the Member cannot perform could be performed with an accommodation(s) and, if so, what the accommodation(s) is (are). The failure to provide information specified in this Paragraph may result in the health provider's report being disregarded by the Town or by the Arbitrator.

4. The Town shall render a written decision on the application for benefits within sixty (60) calendar days after receipt of the application specified above. A copy of the decision shall be mailed to the Member by regular and certified mail, return receipt requested, at the address specified in the application. A copy shall also be delivered to the Accounting and Town Attorney's Offices. The failure to issue a decision in accordance with this time limit shall result in the Member being placed on 207-c status.

5. While a decision on an application is pending, time off alleged to be attributable to the injury giving rise to the claim for GML 207-c benefits shall be charged based on the Department's initial determination.

6. If the decision is that the Member is eligible for GML 207-c benefits, then the Member shall be so categorized and pursuant thereto any time off taken due to such injury or sickness shall be charged to GML 207-c leave, subject to the provisions of Section V below. The Member's GML 207-c benefits shall continue as long as the Member remains eligible.

7. In the event the Member is not satisfied with the Town's decision and wishes to appeal it, the Town's and the employee's physician will agree upon a neutral third party physician who shall promptly examine the Member and render a report as required in ¶ 3. That report shall be promptly forwarded to the employee, Accounting and Town Attorney's Offices for their review. It shall be admissible in evidence, although not given preclusive effect, at any subsequent stage of this procedure.

8. In the event that the neutral third party physician's report does not satisfactorily resolve the parties' dispute, such that the Member is not satisfied with the Town's decision and wishes to appeal it, the Member shall file with the Town within thirty (30) days of receipt of the decision a written demand for arbitration on the GML 207-c claim. The parties to the arbitration shall be the Town and the Member. There shall be a single arbitrator ("the arbitrator"), who shall be selected in accordance with the AAA's Voluntary Labor Arbitration Rules. All costs billed by the Arbitrator shall be borne equally by the Town and the Member. All other costs shall be paid by the party incurring them; e.g., witnesses, exhibits, transcripts, etc.

9. The Arbitrator shall have the authority to decide, whether the Town's denial of the claim of entitlement to GML 207-c benefits was arbitrary and capricious. He or she shall have authority to consider and decide all allegations and defenses made with regard to the GML 207-c claim. In the event of a dispute between the parties as to the nature of the proceeding, the Arbitrator shall first decide whether the proceeding represents an issue of an applicant's initial entitlement to GML 207-c benefits or whether the proceeding presents a different issue that should be decided in a different proceeding, as outlined below.

10. The Arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this procedure, the Collective Bargaining Agreement and the rules. The Arbitrator shall have no authority to make a decision on any issue not submitted or raised by the parties.

11. The decision and award of the Arbitrator shall be final and binding on the parties.

#### **IV. ALLEGED RECURRENCE OR AGGRAVATION OF PRIOR INJURY**

1. In the event that the Member or the Department alleges that an injury is a recurrence or aggravation of a prior injury, the procedures set forth in Section III shall be implemented.

2. Effective February 4, 2003, the Member shall submit to the Town Attorney's Office and Accounting Office any previously unsubmitted health care provider(s) report(s) upon which the Member intends to rely at the hearing immediately upon receiving same from the care provider. If such a relationship is found between the alleged recurrence or aggravation of a prior injury, and the prior injury was designated by the Town as a GML 207-c injury, then the application shall be granted, provided the Arbitrator otherwise finds the Member entitled to GML 207-c benefits as set forth in Section III. If no such relationship is found, then the claim shall be treated as an initial injury and the matter shall be processed pursuant to Section III.

#### **V. TERMINATION OF BENEFITS/RETURN TO DUTY**

1. The Town may review cases of Members receiving GML 207-c benefits for the purpose of determining whether the Member continues to be entitled to those benefits and in furtherance thereof may take such action as is appropriate under the law.

2. Any Member who is receiving benefits under GML 207-c continues to be subject to rules and regulations of the Department.

3. Upon receipt of a certification from the Town designated physician that a Member is able to perform some or all of the duties of his or her position, or upon receiving information wherein the Department asserts the Member is no longer eligible



for 207-c benefits, the Town may notify the Member of same. The Town shall notify the Member by serving a written notice of proposed termination, setting forth the effective date thereof and a copy of the physician's certification, upon the Member by regular mail and certified mail, return receipt requested. The effective date may be no sooner than forty eight (48) hours after notification. A copy shall also be delivered to the Accounting Department and the Town Attorney.

4. If the Member disagrees with the Town's determination, he or she shall commence an appeal pursuant to the procedures outlined in Section III (7). While pending the member shall remain on 207-c status. However, if more than 60 calendar days elapse from the effective date of the Town's notification to the Member and the final resolution of the dispute, that time shall be charged against the Member's accrued leave time. In the event that the Member's GML 207-c status is confirmed when the matter is finally resolved, any leave time used as a result of the operation of this provision shall be reccredited to the Member. Effective February 4, 2003, if the Member disagrees with the Town's determination, he or she shall commence an appeal pursuant to the procedures outlined in Section III (7). The Member shall submit to the Town Attorney's Office any previously unsubmitted health care provider(s) report(s) upon which the Member intends to rely at the hearing immediately upon receiving same from the care provider. While pending, the Member shall remain on 207-c status. However, if more than 60 calendar days elapse from the effective date of the Town's notification to the Member and the final resolution of the dispute, any time in excess of the 60 day period shall be charged against the Member's accrued leave time; except that, if the employee in good faith indicates that he/she is ready, willing and able to go forward on a day or days agreed upon by the arbitrator and counsel for the Member and Town and, in fact, goes forward and presents his/her case within that 60 day period, or a scheduled arbitration hearing is adjourned at the request of the Town or the arbitrator, than the 60 day period shall be extended to 90 days. In the event that the Member's GML 207-c status is confirmed when the matter is finally resolved, any leave time used as a result of this provision shall be reccredited to the Member."

5. Any arbitrator selected to hear a case under this Section must agree to hear the case within thirty (30) days of the date of selection and render an opinion within thirty (30) days thereafter.

## **VI. OTHER PROVISIONS**

1. In the event that any portion of this procedure is invalidated by a decision of a tribunal of competent jurisdiction, then that portion shall be of no force and effect, but the remainder of this procedure shall continue in full force and effect. In this event, either the PBA or the Town shall have the right immediately to reopen negotiations with respect to a substitute for the invalidated portion.

2. A Member may have an attorney of his or her choice or a Member of the Department as his or her representative at any stage of this procedure, provided there is no unreasonable delay.

3. Evidence pertaining to a Member's application for benefits pursuant to the Workers' Compensation Law, including, whether or not the application was controverted, granted or denied, shall not be given any preclusive effect in any stage of this procedure, but shall be admissible as evidence to be given the weight deemed appropriate by the Arbitrator.

## **ARTICLE XLII – NEW YORK STATE COLLEGE SAVINGS TUITION PROGRAM**


Effective as soon as practicable for the Town following the complete ratification and approval of the 2002-2004 Agreement, the Town shall implement a payroll deduction for those unit members desiring to avail themselves of same for the New York State College Savings Program. Prior to making any payroll deductions for a particular member, the member shall execute a release indemnifying, saving and holding the Town and any and all of its employees, representatives, officers and/or members of the Town Board (collectively "employees") harmless against any and all claims, demands, suits or other forms of liability, including legal expenses, that may arise out of, or by

reason of, any action taken or not taken by the Town or any of its employees for the purpose of complying with this payroll deduction agreement, the NYSCSP and/or law.

**IN WITNESS WHEREOF**, the TOWN has caused this Agreement to be signed by its Supervisor, by order of the Town Board; and the PBA has caused this Agreement to be signed by its President, by order of its members.

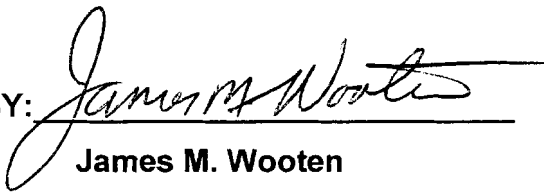
**TOWN OF RIVERHEAD**

**RIVERHEAD POLICE BENEVOLENT  
ASSOCIATION, INC.**

BY: 

**Philip J. Cardinale**

**SUPERVISOR**

BY: 

**James M. Wooten**

**PBA PRESIDENT**